IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.22093 of 2006
WITH
SPECIAL CIVIL APPLICATION No.22424 of 2006
TO
SPECIAL CIVIL APPLICATION No.22465 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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NAGAJANBHAI ARJANBHAI ODEDARA THR'POWER OF ATTORNEY HOLDER - Petitioner
Versus
STATE OF GUJARAT THR' PRINCIPAL SECRETARY & Ors. - Respondents

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Appearance :
MR ND NANAVATY, SENIOR ADVOCATE WITH MR AM PAREKH for Petitioners.
MR LR PUJARI, AGP for Respondent Nos.1 to 3.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date: 13/10/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

All the above-numbered petitions involve consideration of common questions of facts and law, and are directed against acquisition proceedings initiated by the State of Gujarat for the respondent No.4, which is a Company incorporated under the provisions of the Companies Act, 1956. The prayers made in all the petitions are common and, therefore, this Court proposes to dispose of all the above-numbered petitions by this common judgment. The Court also proposes to refer to facts mentioned in the petition i.e. Special Civil Application No.22093 of 2006 for convenience.

2. By filing Special Civil Application No.22093 of 2006 under Article 226 of the Constitution, the petitioner has prayed to quash declaration dated August 30, 2006 made under Section 6 of the Land Acquisition Act, 1894 ("the Act" for short) by which it is declared by the Government of Gujarat, after considering the reports of the Deputy Collector, Jamnagar Division, Jamnagar, under sub-section (2) of Section 5-A of the Act, that the Government of

Gujarat is satisfied that the lands including the land of the petitioner bearing Survey No.662, admeasuring 0 Hectare - 43 RA - 50 Square Metres, situated at Village: Navagam, Taluka: Lalpur, District: Jamnagar, are needed to be acquired for public purpose of setting up a product specific Special Economic Zone for Petroleum and Petrochemicals by the respondent No.4-Company. The petitioner has further prayed to quash notice dated October 4, 2006 issued by the Deputy Collector, Jamnagar Division, Jamnagar, under Section 9(1) & (2) of the Act informing the petitioner and others that the Government would take possession of the lands and that claims of compensation for all interest in such lands should be made to him on November 3, 2006 at 11.OO A.M. in the Office of the Collector, Jamnagar, situated at Lal Bungalow, Jamnagar.

3. The petitioner is owner of Survey No.662, admeasuring 0 Hectare - 43 RA - 50 Square Metres, situated at Village: Navagam, Taluka: Lalpur, District: Jamnagar. The respondent No.4, i.e.

M/s.Reliance Infrastructure Limited, is a company incorporated under the provisions of the Companies Act, 1956. The Parliament has enacted an Act known as “Special Economic Zones Act, 2005” to provide for establishment, development and management of the special economic zones for promotion of export, and for the matters connected therewith or incidental thereto. The Central Government has made the scheme to develop, operate and maintain special economic zones. The scheme aims at development of integrated world-class infrastructure for exports including carrying out manufacture of goods, rendering of services or in connection therewith, and includes industrial, commercial and social infrastructure. The components of a Special Economic Zone include roads, airports, ports, transport system, generation and distribution of power, telecom, hospitals, hostels, educational institutions, leisure and entertainment units, residential/industrial/commercial complexes, water supply, sanitation, sewerage and any other facilities required for development of the Zone. As per the scheme envisaged by the Special Economic Zones Act, 2005, the Special Economic Zones have to

be developed and managed in the private sector, or jointly by the State Government and a private agency or exclusively by the State Government or their agencies. In case of privately developed zones, investors should be either Indian individuals, NRIs, Indian or foreign companies. From the averments made in the petition, it it evident that the respondent No.4-Company was desirous of developing a Special Economic Zone in line with the Policy of Special Economic Zones announced by the Government of India with a view to augmenting infrastructural facilities for export production. It is also evident from the record of the petition, that pursuant to the application dated October 4, 2005 made by the respondent No.4 to the Industries Commissioner, Government of Gujarat, Gandhinagar, necessary recommendation was made by the State Government to the Government of India for formal approval of the proposal and that on the basis of the said recommendation, the Ministry of Commerce had granted `in-principle approval' for the proposed Zone. It further becomes clear from the averments made in the petition that the Government of India, Ministry of

Commerce and Industry, Department of Commerce, informed the respondent No.4 that the in-principle approval of the Government for setting up of a product specific SEZ for petroleum and petrochemicals at Jamnagar, Gujarat, was granted. After grant of in-principle approval by the Government of India, the respondent No.4 proposed to the State Government to initiate proceedings for acquisition of lands situated in Villages Kanalus, Navagam, Kana Chhikari, Dera Chhikari and Padana of Lalpur Taluka, District: Jamnagar for establishment of Special Economic Zone and the Government after considering copy of Memorandum and Articles of Association, copies of Village Forms 7/12 and 8-A relating to the lands situated in the above-mentioned villages, project-report of the respondent No.4-Company, etc. informed the District Collector, Jamnagar, by a communication dated December 2, 2005 to submit report under Section 40 of the Act and Rule 4 of the Land Acquisition (Companies) Rules, 1963 [“the Rules” for short]. The District Collector, Jamnagar, by order dated December 15, 2005 authorised the Deputy Collector, Jamnagar Division, Jamnagar, to make inquiry as contemplated

by Section 40 of the Act and six matters specified in Rule 4 of the Rules and submit to him the reports relating to the lands of Villages Kanalus, Navagam, Kana Chhikari, Dera Chhikari and Padana of Taluka Lalpur, District: Jamnagar. After receipt of communication dated December 15, 2005, the Deputy Collector, Jamnagar, called for report from the District Agricultural Officer, Jamnagar. The District Agricultural Officer, Jamnagar, submitted his detailed report along with forwarding letter dated April 19, 2006, which is produced by the petitioner at Annexure-D to the petition. In the said report, it was, *inter alia,* mentioned that: (1) the lands sought to be acquired were contiguous to Reliance Industries Limited; (2) lands were dry irrigated/non-irrigated lands on which it was possible to raise crops with the help of rainy water but the fertility of the lands was ordinary; and, (3) the lands sought to be acquired were adjoining to Reliance Industries Limited whereas on one side of the lands to be acquired, a railway line passes and, therefore, except the lands sought to be acquired, no other lands in the locality suitable for the purpose of

acquisition were available. Pursuant to the authorization granted to him by the District Collector, Jamnagar, the Deputy Collector, Jamnagar Division, Jamnagar, conducted inquiry under Section 40 of the Act and Rule 4 of the Rules and forwarded his reports dated April 29, 2006 to the District Collector, Jamnagar. Before conducting inquiry, the Deputy Collector, Jamnagar Division, Jamnagar, had informed the concerned landowners by serving Registered Post A.D. notices and also in-person through *Talati*. While conducting inquiry under Section 40 of the Act, the Deputy Collector noticed that: (1) Reliance Infrastructure Limited whose earlier name was Reliance Project Engineering Associates Limited is a public company incorporated under the provisions of the Companies Act, 1956; (2) Reliance Infrastructure Limited is granted in-principle approval for setting up a product specific SEZ for petroleum and petrochemicals at Lalpur Taluka of District: Jamnagar and Principal Chief Industrial Adviser, by his letter dated April 18, 2006, had recommended to acquire the private lands. After perusing the materials collected during the course of

inquiry under Section 40 of the Act, the Deputy Collector, Jamnagar, found that: (1) the project was important to the nation from the view point of international trade; (2) in the first phase of the project itself, infrastructure facilities were to be provided at the cost of Rs.5,000 crores over land admeasuring 6000 acres; (3) in the first phase itself different industrial units were to invest Rs.35,000 to Rs.40,000 crores including investment of Rs.25,000 crores by M/s. Reliance Industries Limited; (4) because of the project, other units manufacturing petrochemical products would be benefited; (5) in the second phase infrastructure facilities would be made available over the land admeasuring 4000 acres; (6) the infrastructure facilities to be provided include amenities like development of land, roads, buildings, railways, port, water supply, entertainment facilities, multi-media, transport, production facilities, I.T. centre of international standards, etc.; (7) after obtaining foreign technology and assistance of experts, modern complex is to be developed; (8) because of the project, direct or indirect employment avenues for 2,50,000 unemployed

persons of the country and the State would be available; (9) the employees associated with the project would be provided residential units with all modern facilities; (10) off-shore financial centre is to be established to assist foreign exporters; (11) as the project is to be established in backward area of Lalpur Taluka, District: Jamnagar, it would help rural progress of the State; and, (12) the project is wholly export oriented and would, therefore, enable the country to earn substantial foreign exchange which would contribute a lot to the financial growth of the country as well as the State and concluded that the acquisition is needed for the construction of work of the Reliance Infrastructure Limited, which is taking steps for engaging in work which is for a public purpose.

4. On receipt of the report from the Deputy Collector, Jamnagar Division, Jamnagar, the District Collector, Jamnagar, scrutinized those reports and thereafter, sent his own five reports on May 15, 2006 including three reports relating to the lands of (1) Village Navagam (2) Village Kanalus and (3) Village

Padana, to the State Government. On consideration of those reports, the State Government was satisfied that the lands specified in the reports, situated at Villages Kanalus, Padana, Kana Chhikari, Dera Chikkari and Navagam of Lalpur Taluka, District: Jamnagar, were likely to be needed for the respondent No.4-Company for public purpose of setting up a product specified Special Economic Zone for petroleum and petrochemicals. Therefore, the State Government issued five different notifications for five villages under Section 4(1) of the Act, which were separately published in the Gujarat Government Gazette Extraordinary, dated June 2, 2006. Thereafter, the petitioner and others were served with the notices under Section 4(1) of the Act. It may be mentioned that the Deputy Collector, Jamnagar Division, Jamnagar, was authorised by the State Government to hear objections as contemplated by Section 5-A(2) of the Act while issuing notifications under Section 4 of the Act. Accordingly, the interested persons lodged objections before the Deputy Collector, Jamnagar Division, Jamnagar, under Section 5-A(1) of the Act. The Deputy Collector gave an opportunity of

being heard to the interested persons and after hearing all such objections and making further inquiry, he submitted his reports under Section 5-A(2) of the Act to the State Government containing his recommendations on the objections together with the record of the proceedings held by him for the decision of the State Government. On scrutiny of the report submitted by the Deputy Collector, Jamnagar Division, Jamnagar, the State Government was satisfied that the lands, which were specified in the notifications published under Section 4(1) of the Act were needed for public purpose of setting up of a product specific special economic zone for petroleum and petrochemicals by the respondent No.4-Company and, therefore, the State Government made five declarations for five villages mentioned above including Village Navagam under Section 6 of the Act, which were published in the official gazette on August 30, 2006. A copy of the declaration made in respect of the lands of Village Navagam is produced by the petitioner at Annexure-E to the petition. Thereafter, the petitioner was served with the notice dated October 4, 2006 under Section 9(1) & (2) of the

Act informing him and other interested persons of the intention of the State Government to take possession of the lands specified in the declaration made under Section 6 of the Act and calling upon them to lodge claim for compensation. A copy of the said notice is produced by the petitioner at Annexure-G to the petition. The petitioner has averred that before forwarding the report under Section 5-A(2) of the Act, the Deputy Collector did not consider his objections dated August 8, 2006 nor the State Government considered those objections and, therefore, declaration made under Section 6 of the Act is liable to be set aside. It is claimed by the petitioner that the petitioner had also lodged written objections on September 19, 2006, but they are not taken into consideration by the Deputy Collector, Jamnagar Division, Jamnagar before issuing notice under Section 9(1) and (2) of the Act and, therefore, the said notice is also liable to be set aside. What is averred by the petitioner is that a "*Public Interest Litigation*", i.e. Special Civil Application No.21139 of 2006 wherein the provisions of the SEZ Act, 2005 are challenged, is entertained

by the Court by issuing notice and as the petitioner is deprived of his right to property on the basis of invalid provisions of the SEZ Act, 2005, reliefs claimed in the petition should be granted. According to the petitioner, the purpose for which the land of the petitioner is acquired cannot be said to be a 'public purpose' within the meaning of Section 40(1)(aa) of the Act, but the land is acquired for private purpose of the respondent No.4-Company and, therefore, declaration made under Section 6 of the Act is liable to be set aside. It is averred by the petitioner that the respondent No.4-Company had not made genuine efforts to acquire the lands by private negotiations after offering reasonable price of the lands to be acquired and, therefore, declaration made under Section 6 of the Act is liable to be set aside. It is claimed by the petitioner that the land of the petitioner is situated in Agricultural Zone which is declared by Vadinar Urban Development Authority and, therefore, the same could not have been acquired for the industrial purpose of the respondent No.4-Company. It is mentioned by the petitioner in the petition that before obtaining previous consent of

the appropriate Government and execution of agreement by the Company, notification under Section 4 of the Act could not have been issued nor declaration under Section 6 could have been made and, therefore, the reliefs claimed in the petition should be granted. It is claimed that the rehabilitation package is not provided by the respondent No.4-Company and, therefore, declaration made under Section 6 of the Act is liable to be set aside. According to the petitioner, the reports made under Rule 4 of the Rules and Section 40 of the Act are illegal and on the basis of those illegal reports, no declaration under Section 6 of the Act could be made by the State Government. Under the circumstances, the petitioner has filed the instant petition and claimed the reliefs to which reference is made earlier.

5. This Court has heard Mr.Nirupam D. Nanavaty, learned Senior Advocate, with Mr.Ashok M. Parekh, learned advocate for the petitioners, at length and in great detail as well as Mr.L.R.Pujari, learned Assistant Government Pleader, who was served with the copy of the petition in advance. This Court has also

considered the documents forming part of the petition.

6. The contention that the objections dated September 19, 2006 were not considered by the Deputy Collector, Jamnagar Division, Jamnagar, before issuance of notices under Section 9(1) and 9(2) of the Act and, therefore, those notices are liable to be set aside, has no substance. Neither the scheme of Section 9 of the Act nor the scheme of the Act envisages that after declaration under Section 6 of the Act is made and before notice under Section 9 of the Act is issued, an interested person has right to file objections. Once declaration under Section 6 of the Act is made, the competent authority would be justified in issuing notice to the interested persons under Section 9 of the Act for determination of compensation payable to them. Therefore, notices issued to the petitioner and others under Section 9(1) and 9(2) of the Act cannot be quashed on the ground that the objections lodged by the petitioners on September 19, 2006, i.e. after publications of declarations made under Section 6 of the Act in the

official gazette, were not taken into consideration by the Deputy Collector, Jamnagar Division, Jamnagar, before issuing those notices. Further, the record does not indicate that the Deputy Collector, Jamnagar, before forwarding the reports under Section 5-A(2) of the Act, had not considered the objections lodged by the petitioners on August 8, 2006. Such a statement is made only on the basis of inference, which has no factual basis at all. It is not the case of the petitioner that he had perused report under Section 5-A(2) of the Act or that he was supplied the said report or that he was informed by the Deputy Collector, who made report under Section 5-A(2) of the Act or by the State Government that the objections filed on August 8, 2006 were not considered before forwarding reports under Section 5-A(2) of the Act. Therefore, declaration made by the State Government under Section 6 of the Act, which is published in the official gazette on August 30, 2006, cannot be quashed on the ground that the Deputy Collector, Jamnagar Division, Jamnagar, while forwarding his reports under Section 5-A(2) of the Act to the State Government, had not considered the

objections filed by the petitioners on August 8, 2006.

7. It may be mentioned that the residents of Village: Kanalus, Village: Navagam and Village: Padana of Lalpur Taluka of Jamnagar District had filed Special Civil Application No.12943 of 2006 with Special Civil Application Nos.12945 to 12989 of 2006 and other cognate matters. Those petitions were also directed against the acquisition proceedings initiated by the State Government for the respondent No.4-Company. Therein, the respondent No.4-Company herein was impleaded as the respondent No.1. The residents of the Villages: Kanalus, Navagam and Padana had prayed to set aside (1) six reports dated April 29, 2006 submitted by the Deputy Collector, Jamnagar Division, Jamnagar, under Section 40 of the Act and Rule 4 of the Rules relating to the lands of three villages mentioned above; (2) three notifications issued under Section 4(1) of the Act relating to the lands of the three villages, which were published in the official gazette separately on June 2, 2006; (3) three reports dated August 29, 2006

relating to the lands of the three villages, forwarded by the Deputy Collector, Jamnagar Division, Jamnagar, to the State Government under Section 5-A(2) of the Act; and, (4) three declarations made by the State Government which were also separately published in the official gazette on August 30, 2006. In those petitions, there was no challenge to the notices issued under Section 9(1) and 9(2) of the Act nor the reports submitted after inquiries under Section 5-A(2) of the Act were challenged on the ground that the objections raised by the petitioners were not considered either by the Deputy Collector or the State Government. The contentions raised therein for consideration of the Court were: (1) the Collector, Jamnagar, had no jurisdiction to delegate his powers to make inquiry under Section 40 of the Act, to the Deputy Collector, Jamnagar, and, therefore, the three reports submitted under Section 40 of the Act were liable to be set aside; (2) the inquiries under Rule 4 of the Rules were vitiated on account of breach of the principles of natural justice as adjournment as prayed for was not granted to enable the petitioners to produce evidence to

indicate that Kharaba land was sold to the sister concern of the respondent-Company at a higher rates than one offered by the respondent-Company to the landowners during negotiations; (3) non-consideration of two letters dated May 12, 2006 and May 26, 2006 to the Collector requesting him not to forward the reports submitted by the Deputy Collector, Jamnagar, under Section 40 of the Act and Rule 4 of the Rules, to the State Government as sufficient opportunity of being heard was not given to the petitioners by the Deputy Collector; (4) during the course of private negotiations, the respondent-Company had not offered reasonable price of the lands to be acquired and, therefore, the reports submitted under Rule 4 of the Rules were liable to be quashed; (5) the Deputy Collector, Jamnagar, had ignored instances of sale of kharaba lands made by the State Government to the sister concern of the respondent-Company before holding that the respondent-Company had offered reasonable price of the lands to be acquired, to the landowners during the course of negotiations and, therefore, the reports submitted under Rule 4 of the Rules should be set aside; (6) the respondent-Company

is, at present, not engaged in any industry nor it is likely to be engaged in any industry nor the lands are needed by it for any "work" or "industry" and, therefore, the acquisition is not for public purpose within the meaning of Section 40(1)(aa) of the Act; (7) after providing infrastructure, the respondent-Company will be engaging itself in the real estate business for profiteering and, therefore, the acquisition proceedings should be regarded as bad in law; (8) in view of in-principle approval granted by the Central Government, the Deputy Collector and the State Government have accepted that establishment of SEZ by the respondent-Company is a public purpose and as inquiry under Section 40 of the Act was an empty formality and an eye-wash, the declarations made under Section 6 of the Act should be quashed; (9) the Deputy Collector and the State Government had not independently considered the factors enumerated in Rule 4 of the Rules because of the grant of in-principle approval granted by the Central Government for establishment of SEZ by the respondent-Company and, therefore, reports submitted under Rule 4 of the Rules should be quashed; (10) the Deputy Collector

had failed to determine compensation payable under Sections 23 and 24 of the Act, as required by Rule 4(2)(ii) of the Rules and, therefore, the reports submitted under Rule 4 of the Rules should be set aside; (11) the potential value of the lands to be acquired was not taken into consideration while determining the compensation under Rule 4(2)(ii) of the Rules and, therefore, the reports submitted under Rule 4 of the Rules should be quashed; (12) the acquisition is excessive and, therefore, the declarations made under Section 6 of the Act should be set aside; (13) rehabilitation package is not provided and, therefore, the acquisition proceedings should be annulled; and, (14) in view of the Gujarat Act 20 of 1965, by which Section 39 of the Act is amended, the provisions of Section 4 of the Act, could not have been pressed into service before grant of consent by the Government and execution of an agreement by the Company and, therefore, the notifications published under Section 4 of the Act should be quashed. After hearing the learned counsels for the petitioners in those petitions as well as Mr.Mihir Joshi, learned Additional Advocate General,

who had represented the case on behalf of the State Government, and Mr.S.N.Shelat, learned Senior Advocate, as well as Mr.K.S.Nanavaty, learned Senior Advocate, appearing for the respondent No.4-Company, all the contentions, which were raised for the consideration of the Court in those petitions, have been negatived by a detailed judgment dated 25-26-27-28-29/09/2006. It may be mentioned that in Special Civil Application No.12943 of 2006 and other cognate matters, what was challenged was also validity of reports submitted by the Deputy Collector, Jamnagar Division, Jamnagar, to the District Collector, Jamnagar, under Rule 4 of the Rules and Section 40 of the Act whereas in the instant petitions, those reports are not challenged at all. Further, in Special Civil Application No.12943 of 2006 and other cognate matters, the petitioners had also challenged the legality of the notifications, which were published under Section 4 of the Act, but in the instant petitions, the petitioners have not challenged the validity of the notifications, which were published in the official gazette on June 2, 2006. This Court notices that over and above

challenging the declaration made by the State Government under Section 6 of the Act, the petitioners have also challenged notices issued to them and other interested persons under Section 9(1) and (2) of the Act for determination of compensation payable to them. Thus, it is evident that the points raised in the present group of petitions were raised in the petitions filed earlier and negatived. In fact, more points/contentions than raised in the instant petitions, were raised in earlier group of petitions for consideration of the Court.

8. As far as other contentions, which are raised in the petitions, are concerned, Mr.N.D. Nanavati, learned Senior Advocate for the petitioners, has fairly conceded that the same are covered by the decision rendered by this Court earlier in Special Civil Application No.12943 of 2006 and other cognate matters and has further stated at the Bar that for the reasons recorded in the judgment delivered in Special Civil Application Nos.12943 of 2006 and cognate matters, appropriate orders be passed in the instant petitions.

9. For the reasons recorded in the judgment dated 25-26-27-28-29/09/2006 rendered in Special Civil Application No.12943 of 2006 and other cognate matters, other contentions raised by the petitioners in the instant petitions are rejected.

10. The net result of the above discussion is that no case is made out by the petitioners for grant of reliefs claimed in the petitions and the petitions are liable to be dismissed.

For the foregoing reasons, the petitions fail and are dismissed.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra